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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/815,056	03/31/2004	Evan C. Lee	SVL920030114/US1	7939
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Tucker Ellis & West LLP 1150 Huntington Bldg, 925 Euclid Ave Cleveland, OH 44115-1414				
EXAMINER				
ADAMS, CHARLES D				
ART UNIT		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/815,056	Applicant(s) LEE, EVAN C.
Examiner CHARLES D. ADAMS	Art Unit 2164

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12 December 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Charles Rones/
Supervisory Patent Examiner, Art Unit 2164

Continuation of 11, does NOT place the application in condition for allowance because: In regards to the 101 rejection of claims 14 and 16-18, Applicant argues "the Examiner has not articulated a position or made any arguments in the record wherein the claim could be considered as being directed to an abstract idea" and "the Examiner has not stated a clear position or reason in the record that claim 14 is merely directed to an 'abstract idea'. In fact, it is to be pointed out that the Examiner referred to these claims in the Office Action as being directed to a 'data structure' as noted herein." In response to these arguments, it is noted that the claims are directed towards a 'fragmentation scheme'. This 'fragmentation scheme' is an abstract idea, as it describes a data model. It tells another program how data is supposed to be stored. The database fragments are data, and have no functional result. This data is not used in any way in claims 14 and 16-18.

As to the art rejections, Applicant argues that "Basu and Sinclair are not combinable and, in particular, they are not combinable in the manner as suggested by the Examiner" and "Accordingly, it is respectfully submitted that the combination of the teachings of Sinclair into those of Basu would undo and distort the scheme of Basu so as to render it useless because Sinclair does not recognize the hierarchical partitioning needed in Basu. The forced combination of the flat scheme of Sinclair into the hierarchical scheme of Basu is unpredicable. Essentially, therefore, it is respectfully submitted that the combination of the teachings of Sinclair into those of Basu is technically improper. it is further respectfully submitted that one of ordinary skill in the art would not be inclined to make the combination in part because of the unpredictable nature of the result(s)."

In response to these arguments, it is noted that Basu et al. teaches wherein the first level is partitioned using range-based partitioning on the key "date." Sinclair et al. teaches to partition using partitioning functions, with the example "one possible partition function would be a range function", and describes a range partitioning function using the key "date". It is clear that both use methods of range partitioning at a first level. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the range partition of Basu et al. to include the range partitioning method of Sinclair et al. The result of such a modification, especially in light of the fact that both references used an example of range partitioning on the same key, would not have been unpredictable. Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Basu et al. in view of Sinclair et al.